

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:22-CV-22671-ALTONAGA/TORRES

DELIO BATISTA,
CARLOS LOPEZ,
MARIANA LOPEZ and
RAFAELA VALIENTE,

Plaintiffs,

vs.

AVANT ASSURANCE INC.,
REINIER CORTES, AND
ANDREA GONZALEZ
QUINTERO,

Defendants.

PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT
TO ADD PREJUDGMENT INTEREST

Plaintiffs, Delio Batista, Carlos Lopez, Mariana Lopez, and Rafaela Valiente, pursuant to Fed. R. Civ. P. 59, request the Court to amend the Final Judgment entered on July 15, 2023 [ECF No. 106], to add prejudgment interest to their breach of contract damages in accordance with Florida law, as follows:

1. The Court entered a Final Judgment as follows in this case on July 15, 2023, following the Jury's Verdict as follows:

- a. \$54,511.00 in breach of contract damages to Plaintiff Delio Batista against Defendant Avant Assurance, Inc.;
- b. \$38,957.00 in breach of contract damages to Plaintiff Carlos Lopez, against Defendant Avant Assurance, Inc.;
- c. \$15,576.00 in breach of contract damages to Plaintiff Mariana Lopez, against Defendant Avant Assurance, Inc.; and

- d. \$68,120.00 in breach of contract damages to Plaintiff Rafaela Valiente, against Defendant Avant Assurance, Inc.

[ECF No. 106.]

2. The Final Judgment provides for post-judgment interest but does not mention prejudgment interest.

3. Plaintiffs demanded prejudgment interest in the *ad damnum* clause of Count II. [ECF No. 1 at 8.]

4. Plaintiffs request the Court to award them prejudgment interest in the following amounts:

- a. Delio Batista seeks prejudgment interest of \$3,057.41;
- b. Carlos Lopez seeks prejudgment interest of \$2,185.02;
- c. Mariana Lopez seeks prejudgment interest of \$873.63; and
- d. Rafaela Valiente seeks prejudgment interest of \$3,820.71.

MEMORANDUM OF LAW

Florida law governs the issue of prejudgment interest, while federal law governs post-judgment interest. *TYR Tactical, LLC v. Protective Prod. Enters., LLC*, 2018 WL 2672391, at *1 (S.D. Fla. June 5, 2018); and *SEB S.A. v. Sunbeam Corp.*, 476 F.3d 1317, 1320 (11th Cir. 2007). Florida law is clear that “when a verdict liquidates damages on a plaintiff’s out-of-pocket, pecuniary losses, plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of that loss.” *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212, 215 (Fla. 1985). Florida law “forecloses discretion in the award of prejudgment interest, [and] there is no discretion in the rate of that interest. The legislature has established a statutory interest rate which controls prejudgment interest.” *Id.* “Once liability has been determined and the amount of damages set, it is merely a

ministerial duty to add the appropriate amount of interest to the principal amount of damages awarded.” *Kissimmee Util. Auth. v. Better Plastics, Inc.*, 526 So. 2d 46, 47 (Fla. 1988).

The jury determined that Avant Assurance, Inc. breached the contractual agreements reached with the Plaintiffs, entitling each Plaintiff to recover prejudgment interest from the date of his/her respective date of loss or breach by the Defendant. *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212, 215 (Fla. 1985); *Amerace Corp. v. Stallings*, 823 So. 2d 110, 116 (Fla. 2002) *see Sterling Villages of Palm Beach Lakes Condo. Ass’n, Inc. v. Lacroze*, 255 So. 3d 870, 872 (Fla. 4th DCA 2018); *SP Healthcare Holdings, LLC v. Surgery Ctr. Holdings, LLC*, 208 So. 3d 775, 780 (Fla. 2d DCA 2016).

In a breach of contract setting, the date of loss is the date of the breach - the date the contractual amount should have been paid. *Ariz. Chem. Co. v. Mohawk Indus., Inc.*, 197 So. 3d 99, 103-4 (Fla. 1st DCA 2016) (“In *Craigside, LLC v. GDC View, LLC*, 74 So.3d 1087, 1092 (Fla. 1st DCA 2011), we noted, ‘Generally, interest awarded as damages in a contract action runs from the date when the right to recover on the claim became vested or accrued, which is ordinarily the date of the breach or the date when payment was due under the contract.’ This observation makes sense because, in many breach-of-contract cases, the damages are direct, occurring simultaneously with the breach.”), *citing Lumbermens Mut. Cas. Co. v. Percefull*, 653 So.2d 389, 390 (Fla. 1995) (holding that prejudgment interest began to accrue on the date payment was due to the plaintiff, but wrongfully withheld, under the terms of the parties' contract); *Craigside*, 74 So.3d at 1092 (holding that interest was to run from the date a condominium developer was contractually obligated to return a sum of money but failed to do so).

The Detailed Bank Deposits tab of Trial Exhibit 12, Defendants' Spreadsheet of Payments to Plaintiffs, establishes that each of the Plaintiffs last received commissions and bonuses (or any payments) from Defendant, Avant Assurance, Inc., as follows:

Delio Batista	Paid	22-Aug-22	Delivered	23-Aug-22
Carlos Lopez	Paid	25-Jul-22	Delivered	26-Jul-22
Mariana Lopez	Paid	25-Jul-22	Delivered	26-Jul-22
Rafaela Valiente	Paid	1-Aug-22	Delivered	2-Aug-22

(Detailed Bank Deposits tab of Trial Exhibit 12 appended hereto in .pdf format as Exhibit "A.")

Based on the undisputed evidence at trial regarding the dates on which each Plaintiff was last paid, the Court properly awards the Plaintiffs prejudgment interest from the dates of last payment to each, as established by the record. *See e.g., Greenberg v. Grossman*, 683 So. 2d 156, 158 (Fla. 3d DCA 1996) (affirming award of "prejudgment interest on the commissions from the last date that [Plaintiff] received those commissions.")

By statute, the Florida legal interest rate is set quarterly by the state's Chief Financial Officer "by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate." Fla. Stat. § 55.03(1); *see* Fla. Stat. §687.01. In accordance with Fla. Stat. §55.03(3), the "applicable prejudgment interest is the rate effective at the time of entitlement and is adjusted annually on January 1 of each year." *Endurance Am. Specialty Ins. Co. v. Liberty Mut. Ins. Co.*, 2020 WL 9597125, at *12 (M.D. Fla. June 4, 2020), *adopted*, 2020 WL 9597127 (M.D. Fla. Aug. 6, 2020); *see also Lawrence v. ACE Am. Ins. Co.*, No. 2019 WL 8273660, at *3 (M.D. Fla. Oct. 24, 2019).

The rates for current and historical time periods are contained in a tables on the Chief Financial Officer's website at <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>. This tables shows that, from June 1, 2022 to July 2023, the

statutory prejudgment interest rate on Plaintiffs' judgment increased from a low of 4.34% to a high of 7.69%.

Using the Chief Financial Officer's tables, the total amount of prejudgment interest that should be added to the judgment is calculated as follows for each Plaintiff:

Delio Batista
(\$54,511.00 due since Aug. 23, 2022)

	Judgment	Interest Rate	Daily Interest	Days	Total Interest
July 1, 2022 Rate	\$54,511.00	4.34%	\$6.48	92	\$596.31
October 1, 2022 Rate	\$54,511.00	4.75%	\$7.09	92	\$652.64
January 1, 2023 Rate	\$54,511.00	5.52%	\$8.24	90	\$741.95
April 1, 2023 Rate	\$54,511.00	6.58%	\$9.83	91	\$894.25
July 1, 2023 Rate	\$54,511.00	7.69%	\$11.48	15	\$172.27
					\$3,057.41

Carlos Lopez
(\$38,957.00 Due Since July 26, 2022)

	Judgment	Interest Rate	Daily Interest	Days	Total Interest
July 1, 2022 Rate	\$38,957.00	4.34%	\$4.63	92	\$426.16
October 1, 2022 Rate	\$38,957.00	4.75%	\$5.07	92	\$466.42
January 1, 2023 Rate	\$38,957.00	5.52%	\$5.89	90	\$530.24
April 1, 2023 Rate	\$38,957.00	6.58%	\$7.02	91	\$639.09
July 1, 2023 Rate	\$38,957.00	7.69%	\$8.21	15	\$123.11
					\$2,185.02

Mariana Lopez
(\$15,576.00 Due Since July 26, 2022)

	Judgment	Interest Rate	Daily Interest	Days	Total Interest
July 1, 2022 Rate	\$15,576.00	4.34%	\$1.85	92	\$170.39
October 1, 2022 Rate	\$15,576.00	4.75%	\$2.03	92	\$186.49
January 1, 2023 Rate	\$15,576.00	5.52%	\$2.36	90	\$212.00
April 1, 2023 Rate	\$15,576.00	6.58%	\$2.81	91	\$255.52
July 1, 2023 Rate	\$15,576.00	7.69%	\$3.28	15	\$49.22
					\$873.63

Rafaela Valiente
(\$68,120.00 Due Since August 2, 2022)

	Judgment	Interest Rate	Daily Interest	Days	Total Interest
July 1, 2022 Rate	\$68,120.00	4.34%	\$8.10	92	\$745.18
October 1, 2022 Rate	\$68,120.00	4.75%	\$8.86	92	\$815.57
January 1, 2023 Rate	\$68,120.00	5.52%	\$10.30	90	\$927.18
April 1, 2023 Rate	\$68,120.00	6.58%	\$12.28	91	\$1,117.50
July 1, 2023 Rate	\$68,120.00	7.69%	\$14.35	15	\$215.28
					\$3,820.71

CONCLUSION

In light of the foregoing, the Plaintiffs respectfully request that the Final Judgment entered in this case on July 15, 2023 [ECF No. 106] be amended to add the prejudgment interest to which the Plaintiffs are entitled by law. The Final Judgment should be amended to include the prejudgment interest to reflect the following awards as of July 15, 2023:

	Principal	Interest	Total
Delio Batista	\$54,511.00	\$3,057.41	\$57,568.41
Carlos Lopez	\$38,957.00	\$2,185.02	\$41,142.02
Mariana Lopez	\$15,576.00	\$873.63	\$16,449.63
Rafaela Valiente	\$68,120.00	\$3,820.71	\$71,940.71

RULE 7.1 CERTIFICATION

Counsel for the movants conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion, but counsel for Defendants did not agree to the relief requested herein.

Dated this 3rd day of August 2023.

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